

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF DANNY WEED FOR AN AQUACULTURE LEASE LOCATED IN LONG COVE, DEER ISLE, HANCOCK COUNTY, MAINE)))))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
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On February 6, 2002, Danny Weed of Sedgwick, Maine applied for an aquaculture lease totaling 2.95 acres in the coastal waters of the State of Maine, located in Long Cove, in Deer Isle, Hancock County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating American oysters (Crassostrea virginica), European oysters (Ostrea edulis), and blue mussels (Mytilus edulis) using suspended culture techniques. The application was accepted as complete on February 20, 2002. The application was revised on October 29, 2002. A public hearing on this application was held on January 15, 2003 at 7:00 p.m. in Deer Isle.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that an aquaculture lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration the number and density of aquaculture leases; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the January 15, 2003 public hearing. At the public hearing, testimony was given by the applicant, Danny Weed, the Department's Aquaculture Environmental Coordinator, Jon Lewis, Shawn Mahaney from the US Army Corps of Engineers, and two members of the public, Carol Woodward and Susan Buxton.

According to the application and the testimony by the applicant, the proposed aquaculture lease is sought to raise American oysters, European oysters, and blue mussels. The applicant requests a lease site totaling 2.95 acres and a lease term of ten (10) years. The applicant testified that the proposed lease boundaries were changed from the original proposal. The applicant split the proposed single site into two tracts in order to allow navigation across the channel and to make room for moorings. The applicant indicated that the coordinates in the revised application and the Department's site report are the correct coordinates for the lease site. The applicant proposes to use tract 1 to moor his boat and float and for bottom winter storage. Tract 2 will be used to grow the shellfish.

The proposed lease activities would consist of growing oysters in ADPI bags or trays. The applicant testified that he will use both floating trays and bags, and trays or cages secured to the bottom. The floating trays would be tied to long lines, with approximately fifty bags or trays on each line. The applicant testified that he had an experimental lease in the same area for three years and he had two lines on the lease. He explained that although the application illustrates a maximum capacity of five lines, he would likely have less than five lines on the lease site. According to the applicant, his season would begin in March, when he would bring the equipment to the site to be sorted and prepared for the growing season. New seed would then be placed into bags or trays. Depending on the volume, the applicant will be on site

for approximately one week in March. Maintenance of the floating bags and trays would occur once per week, on the weekend, and would consist of the bags or trays being flipped to dry marine growth. The grow-out period for the oysters is approximately 3 years. Harvest of the oysters would occur when the market demands. The applicant testified that harvesting the oysters from his experimental lease site occurred on Sundays and that he was on site for approximately two hours each day. The applicant would harvest by boat and would use the float on tract 1 to sort, clean and re-bag the oysters. In late November or early December, the oysters would be submerged below the surface for winter storage. The applicant testified that he would tie cement blocks onto the bags to submerge them. This is the technique he found to be successful with the experimental lease and he did not have any problems with gear entanglements.

According to the application, the applicant will begin operations with 20,000 shellfish, and will increase over time. Maximum capacity for the proposed site is 200,000 market sized oysters. Blue mussels would not be a primary crop, but some seed will be sleeved and hung on lines for personal consumption. The proposed lease site would be accessed by boat from family owned land near the lease site, and from the property of riparian owner Carol Woodward, where the applicant keeps a rowboat. The applicant testified that all seed shellfish would be obtained from a hatchery in Maine.

In accordance with Department regulations, Chapter 2.10(3), the applicant provided an environmental characterization of the proposed lease area. According to the application, the bottom of the proposed lease site consists of soft mud at tract 2 and mud and gravel at tract 1. The site is located in a channel that is 200' to 300' wide at low tide. The depths at low tide are estimated to be 2 to 10 feet. The depths at high tide range from 12 to 20 feet. The current flow is approximately 20 to 25 cm per second and flows in an east/west direction. According to the applicant, there is no plant life at the lease site. Local fauna includes a number of small fish, such as herrings, kayaks, pipe fish and mackerel, green crabs, hermit crabs, mussels, and clams.

The applicant testified that there are three moorings in the lease area. The moorings belong to the applicant, his father-in-law and his nephew. The applicant's mooring is located in tract 1 and the other two moorings are located between the two tracts. According to the applicant, the three mooring owners are the only boaters that regularly travel through the lease area, and the riparian owners do not use the lease area for the mooring of boats or to access their property. The applicant indicated that there is limited recreational boating, kayaking and canoeing in the area of the lease site. Additionally, commercial boating in the area consists of vessels associated with clamming and lobster fishing. According to the applicant, navigation through the area is quite limited. The applicant testified that there is plenty of room to navigate on the south side of the lease area. He stated that the proposed lease area hugs the north side of the channel, leaving over 100 feet of channel south of the lease site in which to navigate. Navigation across the channel can be accomplished in the area between the two lease tracts, which is approximately 1500 feet in length. The applicant testified that the markings on the lease site would be an aid to navigation.

The Department's Aquaculture Environmental Coordinator (AEC) and his assistant conducted a site visit at the proposed lease area on July 24, 2002. During the site visit, a SCUBA diver survey, utilizing an underwater video camera, was performed. The AEC and his assistant created a site report summarizing the information obtained during the site visit and the AEC provided testimony regarding the site report at the public hearing. During the site visit, the applicant indicated he had altered his site from the original dimensions presented in the lease application, splitting it into two tracts. The site report refers to the applicant's amended lease site. The AEC testified that there is a typographical error in the site report. The site report incorrectly states the acreage of the proposed lease site is 3.95 acres. The correct acreage of the proposed site is 2.95 acres, as stated in the application. The AEC also acknowledged an inaccuracy in the Global Positioning System (GPS) data, due to the need to use a hand-held GPS in the cove. He indicated that the dimensions and general location of the site are accurate, however the coordinates are not exact, with an accuracy within seventeen feet.

According to the report and the AEC's testimony, the proposed site is located in Long Cove, approximately 700 feet from the north shore of Long Cove and approximately 400 feet from the south shore of Long Cove. Depths at tract 1 range from approximately 1.26-3.63 feet at mean low water (MLW) and 11.36-13.73 feet at mean high water (MHW), and depths at tract 2 range from approximately -0.03-11.52 feet at MLW and 10.48-21.62 feet at MHW. The bottom of the lease site at tract 1 consists of a relatively flat mud bottom, of a firmer consistency than the bottom of tract 2, and covered in mussel, clam and whelk shells. Tract 2 consists of a flat, soft mud bottom, exhibiting less diversity of flora and fauna than in tract 1. The AEC testified that there are moderate currents in the proposed lease area. He also indicated that due to the shallow and constricted nature of the cove, tidal currents are strong enough to bring food to the shellfish.

According to the site report, the proposed lease site consists of warm water temperatures and low dissolved oxygen levels. Common and abundant flora and fauna at tract 1 during the site visit consisted of mussel, clam, whelk and slipper shells, blue mussels, sea stars, boring sponge, encrusting bryozoans, green crabs, and unattached kelp. Common and abundant flora and fauna at tract 2 consisted of sand shrimp, green crabs, hermit crabs and unattached kelp. The AEC testified that the proposed lease area is an algae-rich environment, in which raising shellfish would be beneficial to the environment.

According to the AEC, two moorings, belonging to the applicant's father-in-law and nephew, were observed near the lease site. The proposed activities, according to the AEC, are not expected to interfere with access to the moorings.

According to the site report, little vessel traffic is expected in the proposed lease area due to the shallow nature of Long Cove. Vessel traffic will likely be limited to riparians accessing their properties, small recreational skiffs, canoes and kayaks. Additionally, traffic may also consist of vessels transiting to and from moorings located along the north shore of the cove. However, the lease site is 700 feet south of the north shore and separated from the shore by mudflats during low tide. Therefore, vessels traveling to and from the moorings along the north shore will likely

travel north of the lease site, along the shore. The AEC contacted Neville Hardy, former Harbormaster of the town of Deer Isle, regarding the lease application. Mr. Hardy indicated that shallow waters prohibit the movement of larger vessels within the cove. Existing traffic, according to Mr. Hardy, tends to travel along the north shore of the cove to access the moorings located along the north shore. Mr. Hardy also stated that the applicant's past activities on the experimental lease site did not cause any problems.

According to the site report, no fishing was observed in the proposed lease area during the site visit. Because the cove is very shallow with limited navigable water at MLW, little fishing is expected in the area of the proposed lease. Additionally, according to the AEC, any commercial fishing in the cove is likely limited to clammers taking advantage of the extensive mudflats in the cove. Mr. Hardy indicated that there is little to no fishing within the cove. According to the site report, the nearest aquaculture lease is located approximately four miles southeast of the proposed lease site.

According to the AEC's report the proposed lease is located in an area classified as open for the harvest of shellfish by the Department's Water Quality Division. Also, according to the report the proposed lease site is not located in an "Essential or Significant Wildlife Habitat" regulated by the Department of Inland Fisheries and Wildlife (IF&W).

Shawn Mahaney, from the U.S. Army Corps of Engineers (USACOE), provided testimony at the hearing. He testified that the USACOE approved the applicant's experimental lease in 1998, and they did not receive any complaints regarding the operation of the experimental lease. He also stated that he reviewed the application for the current proposed lease in February of 2002, and the application was also reviewed by several other federal agencies. He testified that there are no objections to the proposed lease activities.

Carol Woodward, a riparian owner, testified at the hearing. She read a statement by the Evergreen Gardens Club. The club expressed a concern for an open passageway across the channel for small boats that launch from Mariner's Memorial Park, which is located along the north shore of Long Cove. She indicated that there were no negative statements about the

application, and they did not have any problems with the experimental lease. Ms. Woodward expressed a concern for the movement of equipment at low tide. The applicant responded that his mooring system is adequate and the gear does not move outside of the lease boundaries. Ms. Woodward testified that she owns the property where the applicant keeps his rowboat for access to the lease site. She stated that she has had no problems with the applicant and that he does a nice job.

Susan Buxton, of Ingrid Bengis Seafood in Stonington, also provided testimony at the public hearing. She stated that she buys the applicant's oysters and sells them to restaurants all over the world. She testified that diversity is good for business and that the applicant is responsible, does a good job and his product is well liked.

Findings of Fact

The proposed lease is located in Long Cove, approximately 700 feet south of the north shore and 400 feet north of the south shore. Access to the proposed lease would be by boat from family owned land near the lease site, and from the property of riparian owner Carol Woodward. There are three moorings located in the area of the proposed lease site, belonging to the applicant, his father-in-law and his nephew. The two moorings belonging to his father-in-law and nephew are located in between the two lease tracts and are accessible. There is sufficient navigable water outside the lease area and between the tracts in which riparian owners can navigate to access their properties. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

The proposed lease is located in shallow water depths of approximately 1.26-13.73 feet at tract 1, and approximately -0.03-21.62 feet at tract 2. Navigation in the area consists of riparians accessing their properties, small recreational skiffs, canoes and kayaks, and vessels transiting to and from moorings located along the north shore of the cove. The space in between the two proposed lease tracts of approximately 1500 feet allows for navigation across the channel, and there is approximately 100 feet of channel south of the lease site in which to navigate within the channel. Additionally, vessels traveling to the moorings located along the

north shore may navigate north of the site, along the shore. Based on the foregoing, I find that the proposed lease will not unreasonably interfere with navigation.

There is very limited fishing in the area of the proposed lease site. Fishing consists of clammers using the mudflats in the cove. The nearest existing aquaculture lease is located four miles to the southeast. The area of the proposed lease is classified as “open” for the harvest of shellfish. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing flora and fauna observed at the proposed site consists of mussel, clam, whelk and slipper shells, blue mussels, sea stars, boring sponge, encrusting bryozoans, green crabs, unattached kelp, sand shrimp, and hermit crabs. The current flow is estimated to be 20-25 cm per second. Growing shellfish in the proposed lease area will benefit the algae-rich environment. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

All seed shellfish will be obtained from a hatchery in Maine. Based on this evidence, I find that there is an available source of American oysters, European oysters, and blue mussels.

The proposed lease site is not located within 1,000 feet of any public beaches, parks or docking facilities. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;

4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of American oysters, European oysters, and blue mussels; and
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

Based on the foregoing, the Commissioner grants the applicant's requested aquaculture lease of 2.95 acres to the applicant from the date of this decision for the purpose of cultivating American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), and blue mussels (*Mytilus edulis*) using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$5,000 conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation shall be allowed on the open areas of the lease; and

- (2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources